

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4649 OF 2007

Ganpat @ Dattatraya Baburao
Satpute .. Petitioner
Versus
Baburao Jakhuji Wakankar through
his l/rs. Smt.Sarubai Baburao
Wakankar & Ors. .. Respondents

Mr.N.P.Deshpande for petitioner
Mr.Nitin Muley i/b. Girish Godbole for
respondent Nos. 2 and 3.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th November 2007
P.C.

. Heard Mr.Deshpande for petitioner and
Mr.Godbole for respondent. Perused the order
refusing to condone the delay in filing civil
appeal by a tenant against the decree of eviction
passed against him.

2. Although, the lower appellate court
observes that there is no reason much less

sufficient cause/explanation for approaching the court belatedly, yet, from a perusal of the application preferred before the lower appellate court, I find that the petitioner tenant has pointed out that the application for certified copy was filed on 2nd September 2006 and it became available to him on 15th November 2006. The judgement and decree of the Small Causes Court is of 31st August 2006. The trial court granted 3 months' time. In other words, the decree was not to come into effect for three months. It is not as if the petitioner tenant approached the Court after an enormous and unduly long period. The delay is of 100 days and merely because there is no elaboration of domestic problems suffered by the petitioner, does not mean that the liberal principles should not be applied.

3. Considering the fact that the decree is of eviction against the present petitioner and

further condition of payment of cost being imposed, delay in filing of appeal can be condoned. Accordingly, delay of 100 days in filing civil appeal stands condoned. M.A.305 of 2007 stands allowed accordingly. The petitioner, however, to pay costs quantified at Rs.5000/- to the respondent landlord within a period of two weeks from today. Cost condition precedent. Cost to be tendered in the lower appellate court and upon proof of deposit being produced, the lower appellate court to take civil appeal on file and deal with it on merits and in accordance with law. If the cost is not paid, needless to state that the order impugned in this petition shall stand and thereupon the appeal stands dismissed, as being barred by limitation. To enable the petitioner to comply with this order, decree of the trial court of eviction would not be executed for a period of three weeks from today. Respondent landlord is allowed to withdraw the cost deposited. Petition disposed

of in above terms.

(S.C.Dharmadhikari, J)